

8915-0006/dmf

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JAMES C. McELWEE,

**NOTICE OF MOTION**

Plaintiff,

10 CIV 00138 (SCR)

-against-

COUNTY OF ORANGE,

Defendant  
-----X

S I R (S):

PLEASE TAKE NOTICE, that upon the annexed affidavit of David L. Posner, sworn to the 13th day of August, 2010, the affidavit of Robin Darwin, sworn to the 13th day of August, 2010, the attached exhibits, and memorandum of law, defendant will move for an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure granting dismissal of plaintiff's complaint, said motion to be heard before this Court on the 8<sup>th</sup> day of October, 2010, at 9:30 a.m. in the forenoon at the courthouse located at 300 Quarropas Street, White Plains, New York.

PLEASE TAKE NOTICE, that pursuant to the Court's revised briefing schedule, plaintiff's opposition papers are to be served on or before September 24, 2010 and defendant's reply papers are to be served on or before October 8, 2010.

DATED: Poughkeepsie, New York  
August 13, 2010

Yours, etc.

McCABE & MACK LLP

By: 

DAVID L. POSNER (0310)

*Attorneys for Defendant*

63 Washington Street

P.O. Box 509

Poughkeepsie, NY 12602-0509

Tel: (845) 486-6800

8915-0006/dmf

TO: STEPHEN BERGSTEIN, ESQ.  
BERGSTEIN & ULRICH, LLP  
*Attorneys for Plaintiffk*  
15 Railroad Avenue  
Chester, NY 10918